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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TARA D. SADLER and DONALD SADLER, wife and husband Plaintiffs - Appellants, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign insurer, Defendant - Appellee.	No. 08-35859 D.C. No. CV07-00995 - TSZ MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Argued and Submitted October 15, 2009
Seattle, Washington

Before: RAWLINSON and CALLAHAN, Circuit Judges, and BURNS,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Larry A. Burns, U.S. District Judge for the Southern District of California, sitting by designation.

Tara and Donald Sadler (the "Sadlers") appeal from the district court's grant of summary judgment in favor of State Farm on their claims of bad faith and alleged violations of Washington's Consumer Protection Act ("CPA").[1] We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.[2]

The district court properly concluded as a matter of law that State Farm did not have a duty to preapprove Tara's surgery under the personal injury protection ("PIP") provision of the Sadlers' automobile insurance policy. The PIP does not require preapproval for medical treatment, explicitly allows State Farm to obtain an independent medical examination ("IME"), and indicates that payment is to be made as medical expenses are *incurred*. Further, there is no Washington law recognizing an implied duty to preauthorize treatment under a PIP. Because State Farm had no implied duty to preapprove Tara's surgery, State Farm cannot be charged with any harm flowing from Tara's decision to await the outcome of the IME before proceeding with treatment.

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[1] The Sadlers alleged claims for breach of fiduciary duty, breach of the duty of good faith, and negligence. We refer to these claims collectively as the Sadlers' claims for "bad faith." *See Tank v. State Farm Fire & Casualty Co.*, 715 P.2d 1133, 1136 (Wash. 1986) (en banc) (discussing good faith duties of insurers).

[2] The parties are familiar with the facts and we repeat them here only as necessary to explain our decision.

The district court also properly granted State Farm summary judgment on the Sadlers' related claim that State Farm had acted in bad faith by requesting and then delaying the IME. The undisputed facts show that State Farm had a contractual right to obtain the IME, that as soon as State Farm learned of Tara's request for surgery it scheduled an IME, and that the IME report was completed about thirty-six days thereafter. The Sadlers cite no evidence indicating that State Farm's handling of the IME was atypical, contrary to law, or otherwise unreasonable, unfounded or frivolous. *See*, *e.g.*, *Overton v. Consol. Ins. Co.*, 38 P.3d 322, 329 (Wash. 2002) (en banc) (to prevail on a claim of bad faith, an insured must show that the insurer's conduct was "unreasonable, frivolous, or unfounded").

Finally, the district court properly granted summary judgment as to the Sadlers' CPA claims. These claims fail as a matter of law due to the Sadlers' failure to establish the requisite injury to business or property. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 535 (Wash. 1986) (en banc) . Because the Sadlers' arguments under the CPA are premised on the loss of Tara's job, and because a job loss is a personal injury, not an injury to business or property under the CPA, the district court correctly granted summary

judgment to State Farm. *See Ambach v. French*, 216 P.3d 405, 407-11 (Wash. 2009)(en banc) .

AFFIRMED.